

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-88
Table of Allotments,)	RM-11173
FM Broadcast Stations.)	RM-11177
(San Luis Obispo and Lost Hills, California and)	
Maricopa, California))	
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 2, 2005

Released: March 4, 2005

Comment Date: April 25, 2005

Reply Comment Date: May 10, 2005

By the Assistant Chief, Audio Division, Media Bureau

1. The Audio Division has before it two mutually exclusive Petitions for Rule Making. The first proposal, filed by GTM San Luis Obispo ("GTM San Luis"), licensee of Station KLRM(FM), San Luis Obispo, California, proposes the substitution of Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallocation of Channel 245B1 from San Luis Obispo to Lost Hills, California, as its second local service, and modification of the Station KLRM(FM) license accordingly. The second proposal, filed by 105 Mountain Air, Inc. ("Mountain Air") requests the allotment of Channel 245A at Maricopa, California, as its second local service. Both petitioners stated their intentions to apply for the requested channels, if allotted.

2. GTM San Luis filed its request pursuant to Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.¹ The proposed reallocation of Channel 245B1 at Lost Hills, California is mutually exclusive with the current authorized facilities of Station KLRM(FM), Channel 246B1, San Luis Obispo, California. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.² To this end, the proposed Lost Hills reallocation would provide a second local service,³ whereas the retention of Station KLRM at San Luis Obispo would attribute to a twelfth local service.⁴ As such, the reallocation proposal results in a

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

³ Vacant Channel 289A is currently assigned to Lost Hills.

⁴ AM Stations KVEC, KJDJ, KYNS, and KKJL, noncommercial Stations KLVH-FM, KCBX, KCPR, and commercial FM Stations KZOZ, KSLY-FM, KLRM, and KKJG are currently license to San Luis Obispo.

preferential arrangement of allotments based on priority (4), other public interest matters. In support of its proposal, GTM San Luis states that the proposed Lost Hills reallocation of Channel 245B1 would serve the public interest by providing Lost Hills with its second local service and first competitive FM service. The community of Lost Hills is a Census Designated Place located in Kern County, California with a 2000 U.S. Census population of 1,938 persons. Lost Hills has its own zip code, post office, fire department, water department, school district, and local businesses. Moreover, GTM San Luis states that KLRM currently serves 215,195 persons within its 60 dBu contour. In this instance, the proposed Lost Hills reallocation of Channel 245B1 has the potential to service 204,140 persons within the Station KLRM proposed 60 dBu contour, while resulting in a loss of service to 11,055 persons. The loss area would be well served with 9 or more services. The proposed Lost Hills reallocation would not cover any part of an Urbanized Area. Thus, GTM San Luis is not required to submit a *Tuck* showing.⁵

3. Mountain Air filed its proposal requesting the allotment of Channel 245A to Maricopa, California, as its second local service.⁶ Maricopa is an incorporated city located in Kern County, California listed in the 2000 U.S. Census with a population of 1,111 persons.

4. We find that both proposals warrant consideration because the proposed allotments could provide the communities of Lost Hills and Maricopa with a second local service. However, both proposals cannot be accommodated in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules. The proposals are located 52.4 kilometers apart whereas the minimum distance separation requirement is 143 kilometers. As such, we shall provide each proponent an opportunity to demonstrate in its comments why its community should receive the requested allotment. In this regard, the parties should be guided by the allotment criteria for FM allotment priorities.⁷ Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

5. A staff engineering analysis has determined that Channel 245B1 can be reallocated to Lost Hills, California in conformity with the Commission's rules, provided there is a site restriction of 16.6 kilometers (10.3 miles) south at coordinates 35-28-00 NL and 119-41-00 WL. Alternatively, Channel 245A can be allotted to Maricopa, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 2.9 kilometers (1.8 miles) southwest at coordinates 35-02-41 NL and 119-25-25 WL. In accordance with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest pertaining to the use of Channel 245B1 at Lost Hills.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

⁶ Vacant-but-applied-for Channel 235A is assigned currently to Maricopa, California. In this regard, Channel 235A at Maricopa, FM034, was scheduled in Auction No. 37 held in November 2004.

⁷ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<u>Community</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
	<u>Option 1</u>	
San Luis Obispo, California	227B, 241B, 246B1, 251B	227B, 241B, 251B
Lost Hills, California	289A	245B1, 289A
	<u>Option 2</u>	
Maricopa, California	235A	235A, 245A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 25, 2005, and reply comments on or before May 10, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Lewis J. Paper, Esq.	Robert Eurich, President
Andrew S. Kersting, Esq.	105 Mountain Air, Inc.
Counsel, GTM San Luis Obispo	7179 N. Van Ness
Dickstein, Shapiro, Morin & Oshinsky, LLP	Fresno, California 93711
2101 L Street, N.W.	
Washington, D.C. 20037-1526	

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section

73.202(b) of the Commission's Rules.⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

11. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁸ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.